

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of
AIRCELL, INC.
Petition, Pursuant to Section 7 of the Act, for a
Waiver of the Airborne Cellular Rule, Or, in the
Alternative, for a Declaratory Ruling
Docket No. 02-86

ORDER

Adopted: May 3, 2002

Released: May 3, 2002

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On March 28, 2002, AirCell, Inc. and its partners (AirCell) filed a petition requesting that the Commission extend its waiver of Section 22.925<sup>1</sup> of the Commission's rules.<sup>2</sup> On April 23, 2002, the Wireless Telecommunications Bureau (Bureau) released a public notice seeking comment on AirCell's request and setting deadlines of May 15, 2002 for comments and May 28, 2002 for replies.<sup>3</sup> A number of Cellular carriers opposed to AirCell's waiver filed a motion seeking to suspend that comment cycle until the Commission issues an order in response to the remand by the Court of Appeals for the District of Columbia Circuit in a case involving the existing waiver grant to AirCell,<sup>4</sup> contending that "meaningful opportunity for comment is dependent on issuance of the remand order ...."<sup>5</sup>

2. While we do not reach any conclusion regarding the nature and extent of the connection between the issue on remand and the issues raised in the March 28, 2002 AirCell request, we see no harm in temporarily suspending the pleading cycle related to that request so long as such suspension does not result in the termination of AirCell's existing waiver before the Commission has had a chance to review AirCell's request to extend that waiver and any comments that may be filed in response to that request.

3. AirCell's current waiver is set to expire on June 9, 2002.<sup>6</sup> Under the current pleading

<sup>1</sup> 47 C.F.R. § 22.925.

<sup>2</sup> In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling (filed March 28, 2002).

<sup>3</sup> Wireless Telecommunications Bureau Seeks Comment on Petition Filed by AirCell, Inc. for Extension of Waiver, Public Notice, DA 02-949, April 23, 2002 (WTB).

<sup>4</sup> See AT&T Wireless Services Inc. v. FCC, 270 F.3d 959 (D.C. Cir. 2001), petition for rehearing denied January 29, 2002.

<sup>5</sup> Motion to Suspend Comment Dates Pending Prompt Action on Remand (Motion), filed by AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (Petitioners), April 26, 2002.

<sup>6</sup> See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling, Memorandum Opinion and Order, 15 FCC Rcd. 9622 (2000).

cycle, we would have had the complete record concerning AirCell's March 28, 2002 request in advance of that expiration date. If we suspend the pleading cycle as requested, however, it is unlikely that the Commission will issue its Order on Remand, that the pleading cycle can then be restarted and completed, and that the Bureau can adequately consider the record, all before AirCell's waiver expires.

4. Therefore, we will suspend the pleading cycle set in the April 23, 2002 Public Notice and simultaneously extend AirCell's current waiver, under its existing terms and conditions other than the expiration date, pending the Bureau's action on AirCell's request to extend that waiver. After the Commission issues its Order on Remand, the Bureau will reinstate the pleading cycle as appropriate. This approach will allow opposing parties sufficient time to prepare their comments in light of the forthcoming Order on Remand, as they request, without depriving AirCell and its partners of meaningful review of their request to extend the waiver, and will allow sufficient time for full and careful consideration of the arguments presented by all parties to this proceeding.

5. For the above reasons, IT IS ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Motion to Suspend Comment Dates filed by AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless, IS GRANTED to the extent described herein. IT IS FURTHER ORDERED that the waiver of Section 22.925 of the Commission's rules, 47 C.F.R. 22.925, granted to AirCell and its partner licensees, is extended pending further action, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze, Chief  
Commercial Wireless Division,  
Wireless Telecommunications Bureau